

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**SCOTTY A. FLEMING**  
Claimant

VS.

**COMMERCIAL WATERPROOFING, INC.**  
Respondent

AND

**TRAVELERS INSURANCE COMPANY**  
Insurance Carrier

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Docket No. 189,884

**ORDER**

This Application for Review of a Preliminary Hearing Order entered by Administrative Law Judge Shannon S. Krysl on January 5, 1995, came on before the Appeals Board at the request of claimant.

**ISSUES**

Claimant requests the Appeals Board to review the issue of whether or not claimant suffered an accidental injury arising out of and in the course of his employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and for preliminary hearing purposes, the Appeals Board finds as follows:

The above issue raised by the claimant is one the Appeals Board has jurisdiction to review from a preliminary hearing order. See K.S.A. 44-534a(a)(2).

Claimant was injured in a one-vehicle accident that occurred on December 5, 1993, at 3:30 a.m., just east of Rock Road on 47th Street South in Wichita, Kansas, approximately two (2) miles from his apartment. Claimant testified that he went to sleep while driving his pickup, causing the pickup to roll over, pinning him inside. He received injuries to his neck region and left clavicle. Claimant alleges he was returning to Springfield, Missouri, where he was employed by the respondent as a painter. He testified that he had to meet friends for breakfast at 10:00 a.m. that morning in Springfield. He also needed to look over the job site on Sunday, December 5, 1993. Claimant tried to establish

through his testimony that it was necessary for him to return to Wichita each weekend in order to pick up his paycheck from his employer. However, such testimony is inconsistent and is very confusing as to the necessity of his returning to Wichita for his paycheck.

The Administrative Law Judge denied claimant's request for temporary total disability and medical benefits as a result of his alleged injuries. She found that the claimant was not credible and he was not returning to work when the accident happened but was on his own personal time. The Appeals Board agrees with the Administrative Law Judge's decision denying claimant benefits. The Appeals Board finds that the claimant has failed to prove that the accident in which he was involved in on December 5, 1993, occurred while he was performing work-related activities for the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl, denying claimant's request for benefits, is affirmed and remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jack Shelton, Wichita, KS  
William Townsley III, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director